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Christopher Black

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. CHRISTOPHER BLACK Defendant.	**CASE NO. 08CR0274-02-LAB** **NOTICE OF MOTION AND MOTION TO REVOKE THE DETENTION ORDER OF THE MAGISTRATE JUDGE** JUDGE: HON. LARRY A. BURNS COURT: COURTROOM 9 DATE: AUGUST 25, 2008 TIME: 2:00 p.m.

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND CHRISTOPHER P. TENORIO, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on Monday, August 25, 2008 at 2:00 p.m. or as soon thereafter as counsel may be heard, the above named Defendant, by and through his counsel, will present the following Motion to Revoke the Detention Order of the Magistrate Judge.

MOTION

Defendant, CHRISTOPHER BLACK, pursuant to the provisions of the Federal Rules of Criminal Procedure and 18 U.S.C. §§ 3142 and 3145(b), and the applicable case law of the United States Supreme Court and the Circuit Courts of the United States, hereby moves for revocation of the Detention Order imposed in the above styled cause and the issuance of an order admitting Defendant to bail in this jurisdiction under conditions this court deems necessary; and for any further relief this Court may deem just and proper.

This Motion is made and based upon this Notice of Motion, the attached Memorandum of Points and Authorities, all files and records in the above captioned case, and on any matters which may come to this Court's attention prior to or at the time of hearing this motion.

Dated: August 1, 2008

/s/ John P. Rogers
JOHN P. ROGERS

Dated: August 1, 2008

/s/ Mark F. Adams
MARK F. ADAMS
Attorneys for Defendant
Christopher Black

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CHRISTOPHER BLACK, Defendant.	**Case No. 08CR0274-02-LAB** **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, John P. Rogers, am a citizen of the United States and am at least eighteen years of age. My business address is 120 South Central Avenue, Suite 120, Clayton, Missouri 63105.

I am not a party to the above-entitled action. I have caused service of the defense MOTION TO REVOKE THE DETENTION ORDER OF THE MAGISTRATE JUDGE on the following parties by electronically filing the foregoing with the Clerk of the United States District Court using its ECF System, which electronically notifies the following individuals:

Christopher P. Tenorio, Attorney for the Government, christopher.tenorio@usdoj.gov

I declare under penalty of perjury that the foregoing is true and correct and that this proof of service was executed on August 1, 2008 at Clayton, Missouri.

/s/ John P. Rogers
John P. Rogers

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Attorneys for Defendant
Christopher Black

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. CHRISTOPHER BLACK Defendant.	**CASE NO. 08CR0274-02-LAB** **MEMORANDUM IN SUPPORT OF MOTION TO REVOKE THE DETENTION ORDER OF THE MAGISTRATE JUDGE** JUDGE: HON. LARRY A. BURNS COURT: COURTROOM 9 DATE: AUGUST 25, 2008 TIME: 2:00 p.m.

I

STATEMENT OF THE CASE

Defendant, Christopher Black, is named in a ten count superceding criminal indictment charging a Conspiracy to Engage in Sex Trafficking of Children, Conspiracy to Coerce and Entice Juveniles into Prostitution, and eight substantive counts of Recruiting and Enticing Juveniles into Prostitution in violation of Title 18 U.S.C. §§ 371, 1591, and 2422. The superceding indictment charges Mr. Black in both conspiracy counts and four of the substantive charges. The substantive charges, as filed, carry a mandatory minimum sentence of ten years upon conviction.

On June 3, 2008, a Detention Hearing was held before the United States District Court for the Western District of Texas. A report and recommendation prepared by the United States Pretrial Services Office was presented to the Court at the time of said hearing. The report prepared by the Pretrial Services Office set forth a recommendation of release on unsecured bond in the amount of $50,000. Despite the recommendation of an unsecured bond by Pretrial Services, the Magistrate Judge in the Western District of Texas entered his order denying Defendant bond.

II

THE MAGISTRATE JUDGE'S ANALYSIS

The magistrate judge noted that "[Defendant's] parents appeared in court and are willing to accept custody of their son to assure his appearance for court proceedings," such that the court had "no reason to doubt that Black would appear in court as required." Detention Order at 4.

The magistrate judge justified his order of detention based on Defendant's purported danger to others, citing 1) the presumption of detention in cases involving a "crime of violence" and 2) the alleged fear the victim, L.A., has of Defendant and of retaliation by Defendant. Id. The magistrate judge found that "no conditions of release will reasonably assure the safety of the victim." Id. The court based this decision primarily on the Government's unrebutted proffer that alleged that the "13 year old victim in this case, L.A., is afraid of Black and fears retaliation." Id. The judge further noted that the Defendant would be residing with his parents near Camp Pendleton, in "close proximity" to the victim in this case. Id. The Magistrate Judge's order provided no specific details regarding the Government's proffered allegations of the victim's fear of Defendant.

III

APPLICABLE PRINCIPLES OF LAW

18 U.S.C. §3145(b) provides that a person who is ordered detained by a magistrate judge "may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order." The standard which the court is to apply in considering the release or detention of a defendant pending trial is provided in 18 U.S.C.A. § 3142, which provides for detention only if, after hearing, the judicial officer finds that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C.A. § 3142(e).

The Bail Reform Act ("the Act") preserves the preference for release of the accused pending trial. *See generally* United States v. Salerno, 481 U.S. 739 (1987). Liberty is the norm under the Act, detention the carefully limited exception. Id. at 755.

As the Ninth Circuit has noted:

> These principles accordingly govern (in a case involving a determination of pretrial detention): 1. Federal law has traditionally provided that a person arrested for a non-capital offense shall be admitted to bail. 2. Only in rare cases should release be denied. 3. Doubts regarding the propriety of release are to be resolved in favor of defendants.

U.S. v. Townsend, 897 F.2d 989, 993-94 (9th Cir.1990). The passage of the pretrial detention provision of the 1984 Act "did not...signal a congressional intent to incarcerate wholesale the category of accused persons awaiting trial." United States v. Orta, 760 F.2d 887, 890 (8th Cir. 1985). Instead, Congress was "demonstrating its concern about a 'small but identifiable group of particularly dangerous defendants as to whom neither the impostion [sic] of stringent release conditions nor the prospect of revocation of release can reasonably assure the safety of the community or other persons.'" Id. (quoting S. Rep. No. 225, 95th Cong., 1st Sess. 6-7 reprinted in 1984 Code Cong. & Ad.News at 3189) (emphasis added). *See also* U.S. v. Hir, 517 F.3d 1081, 1089 (Bail Reform Act granted courts the authority to deny release to defendants who pose "an especially grave risk to the safety of the community").

Pursuant to 3142(e), when the case involves a an offense under 18 U.S.C. §§ 1591 or 2242, a rebuttable presumption arises that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." 18 U.S.C. § 3142(e). This presumption shifts a burden of production to the defendant, but "the burden of persuasion remains with the government." U.S. v. Hir, 517 F.3d 1081, 1086 (9th Cir.2008). *See also* United States v. Rodriguez, 950 F.2d 85, 88 (2d Cir.1991). When a defendant proffers evidence to rebut the presumption, the presumption "remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence relevant to factors listed in § 3142(g)." Hir, 517 F.3d at 1086.

When a defendant proffers evidence to rebut the presumption regarding danger to the community, the court considers four factors in determining whether the pretrial detention standard (that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community") is met: "(1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including the person's character, physical and mental condition, family and community ties, employment, financial resources, past criminal conduct, and history relating to drug or alcohol abuse; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release" Hir, 517 F.3d at 1086; United States v. Cardenas, 784 F.2d 937, 938 (9th Cir.1986). A finding that no condition or combination of conditions will reasonably assure the safety of any other person and the community must be supported by "clear and convincing evidence." 18 U.S.C. § 3142(f)(2)(B). Consistent with the intent of Congress, the Act encourages release of the accused pending trial provided some condition or combination of conditions can reasonably assure the appearance of the accused at trial and the safety of the community or any other person. *See* Orta, 760 F.2d at 890-91.

IV. DISCUSSION

A. Risk of Flight

As noted above, Defendant proffered evidence, in the form of his parents' testimony, that rebutted the presumption that he was a flight risk. Moreover, the magistrate judge concluded that it had "no reason to doubt that Black would appear in court as required." Id.

B. Danger to the Community or Any Other Persons

The magistrate deemed Defendant Black to pose a danger to the "safety of the community or any other person" against which no combination of conditions of release could reasonably assure. In so doing, the court relied on the presumption of dangerousness and two proffers of evidence: 1) the government's allegation that the victim, L.A., was frightened of Defendant; and 2) the Defendant's proffer that he would be residing upon release with his parents in proximity to Camp Pendleton. *See* Id. Neither alone nor in the aggregate do these factors prove by clear and convincing evidence that Black poses a danger to the community or any other person against which no combination of conditions of release can reasonably assure. Defendant proffers that his release to home confinement in the custody of his parents in Oceanside, California, combined with electronic monitoring and other safeguards as the Court may suggest, would assure the safety of L.A. and the community.

The government's proffered information before the magistrate judge alleges that the victim is afraid of the Defendant and of retaliation by Defendant. The magistrate judge made no indication as to the reasonableness of the victim's alleged fears, nor mentioned any conduct by Defendant that would justify her fear for her safety. There is no indication in the magistrate judge's order, nor in the discovery received to date from the government, that Defendant ever used or threatened violence toward L.A. or any other person. Defendant has no prior criminal history. See Id. at 3. There is no indication in the magistrate judge's order, nor in the discovery received to date from the government, that Defendant ever attempted to contact L.A. or any other alleged victim subsequent to the initiation of this case.

Moreover, conditions of release can be crafted in a manner that would reasonably assure the safety of L.A. and others in the community. Defendant suggests that home confinement and electronic monitoring would assure his distance from L.A. and isolation from the greater community. His release to his parents at their residence in Oceanside would further assure his compliance with any restrictions this Court sees fit to impose to protect L.A. and the community. His father is a Master Sergeant with the U.S. Marine Corps, and there is no allegation that his parents, who would operate as third party custodians of Defendant, are of questionable character in any regard.

V.

CONCLUSION

For the foregoing reasons, Defendant Christopher Black respectfully requests that this Honorable Court revoke the Detention Order imposed in the above-styled cause and enter its order admitting Defendant to bail in this jurisdiction under conditions this Court deems necessary to reasonably assure his appearance at trial and the safety of the community or any person.

Dated: August 1, 2008

/s/ John P. Rogers
JOHN P. ROGERS

Dated: August 1, 2008

/s/ Mark F. Adams
MARK F. ADAMS
Attorneys for Defendant
Christopher Black